MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2022/2023 SESSION (TERM ID 2220)

UCV4622 – CIVIL PROCEDURE II

(All Sections / Groups)

05 JULY 2023
Reading Time: 02:30pm-02:45pm
(15 Minutes)
Answering Time: 02:45pm-05:45pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 5 Questions only.

3. This paper consists of two parts. **PART A** is **COMPULSORY. PART B to attempt either question 4A or 4B.** The distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY

QUESTION 1

(a) Mega X Sdn Bhd ("MXSB"), is a well-known advertising company and has a registered office in Kuala Lumpur. Nyonya Mansur ("NM") is the sole proprietor of Classic Fashionista Enterprise ("CFE"), majoring in selling traditional couture and has a boutique store in Shah Alam. Pursuant to an agreement dated 12th December 2022 between MXSB and NM and in consideration of the payment of the sum of Ringgit Malaysia One Hundred and Fifty Thousand (RM150,000) (Agreed Sum), MXSB agreed to provide advertisement services and commercial plans to promote CFE's latest collection for *2023 Aidilfitri*. NM has agreed to pay MXSB the sum of Ringgit Malaysia Fifteen Thousand (RM15,000) being ten per centum of the Agreed Sum which sum was paid by NM on 13th December 2022. The advertisement services and commercial plans were carried out from 13th March 2023 and ended on 13th April 2023. Invoices for services done by MXSB were sent out twice, on 14th March 2023 and 15th April 2023, respectively. MXSB claims that CFE has only paid the sum of Ringgit Malaysia Twenty-Five Thousand (RM25,000) on 30th March 2023 and has failed to pay the balance of the Agreed Sum (Balance Sum). MXSB has also made numerous calls to NM and CFE store and has issued emails dated 15th April 2023 and 6th June 2023 demanding the payment of the Balance Sum due and owing to MXSB. MXSB now instructs you to commence an action for the recovery of the Balance Sum.

Draft a proper pleading to recover the Balance Sum due and owing to MXSB under the agreement.

(15 marks)

(b) "A Judge has a discretion to allow leave to amend pleadings. Like any other discretion, it must of course be exercised judicially."

Per Barakbah JA in *Kam Hoy Trading v Kam Fatt Tin Mine [1963]* MLJ 248

Elucidate what the judge's discretions are in allowing leave to amend pleadings.

(10 marks)

(Total: 25 marks)

Continued...

QUESTION 2

(a) The plaintiff is the registered proprietor of a piece of land in Mukim Bagan Serai, Daerah Kerian, Negeri Perak (the said Land). The plaintiff avers that he has been planting oil palm on the said Land and reaping benefits therefrom. The first defendant is a statutory body established under the Farmers' Organization Act 1973. The second defendant is alleged to be the employer and/or principal of the first defendant. The third defendant is the employer and/or principal of the second defendant. Sometime in 2018 or 2019, there were excavation works on the land adjoining the said Land. Solid waste materials from the excavation works were dumped onto the said Land causing the land to become clayey and unsuitable for the planting of oil palms. The plaintiff suffered losses which are alleged to be continuing. The excavation works were alleged to have been carried out by the first defendant and/or its agents or done with its permission and alleged to have been done with the approval of the second and third defendants. The plaintiff sues the defendants for trespass on the grounds the defendants had entered onto the said Land, and placed things thereon causing it to be infertile and the plaintiff to suffer losses estimated at RM1,100 per month since 2018 and continuing. Attempts made by the plaintiff to find out who exactly was responsible were unsuccessful due to a lack of cooperation by the first defendant. The defendants have filed an application under Order 18 rule 19, Rules of Court 2012, asserting that (i) pursuant to sections 5 and 6 of the Government Proceedings Act 1956, in any claim in tort against the Government, the public officer who is responsible has to be made a party and his or her liability first established before the Government can be made liable, and the plaintiff has failed to do so; and (ii) the action filed in 2023 premised upon acts which are alleged to have taken place in 2018 and 2019 is barred by limitation pursuant to section 2(a) of the Public Authorities Protection Act 1948 which in summary provides that any action against any person for any act done in pursuance to any public duty or authority shall not be instituted unless it is commenced within 36 months after the act neglect or default complained of.

Based on the above, examine the ground or grounds of the defendants' application under Order 18 rule 19 and whether the defendants can succeed in their application.

(15 marks)

Continued...

(b) The plaintiff is a company which is in the business of manufacturing and selling gloves. The glove-manufacturing process requires thermal heat, which is obtained from its supplier, Hot & Summer ("H&S"). H&S use palm kernel shells (PKS) as the main source of fuel to generate biomass energy and thermal heat while wood chips and wood pellets are alternative fuel sources. The defendant was the plaintiff's Global Sourcing Manager. His duties include sourcing and procuring various items for the company. The major items sourced are PKS and wood chips. After the defendant left the employment in late 2019, the plaintiff discovered that the defendant had set up his own company of manufacturing and selling gloves based on thermal heat using PKS and/or wood chips which came from the same supplier. The plaintiff claimed that this is a breach of the defendant's duties to the plaintiff. The plaintiff thus filed a claim against the defendant, for breach of duty of fidelity and breach of fiduciary duty, concerted practice, and for illegal commission and bribes. During proceedings, the plaintiff filed an application for the plaintiff to enter the defendant's premises to search and seize certain incriminating documents that may benefit the trial.

Based on the above, examine the application made by the plaintiff and the requirements for it to succeed.

(10 marks)

(Total: 25 marks)

QUESTION 3

(a) The plaintiff, the developer of a piece of commercial property known as the Allied Trade Centre (ATC) sued the defendant for defamation based on defamatory statements contained in three documents in the form of letters which both parties agreed during the case management, were to be included in Part A of the bundle of documents (BOD). The statements contained allegation that the plaintiff, among others, mismanaged the ATC and embezzled the funds, conducting the annual general meeting unfairly, abuse of power, oppressive management, cheating, dishonest conduct, and collecting unlawful profit. The defendant contended that since the defamatory statements were included in Part A of the BOD, the plaintiff was deemed to have agreed to the truth of the statements and as such had no right to cross-examination on the contents of the documents. In reply, the plaintiff submitted that Part A documents meant only the contents had been agreed but not the truth and in consequence the appellant was required to establish the usual defence such as the truth of the statements and qualified privilege.

Based on the above –

(i) Identify the court documents that must be filed prior to a trial date.

(7 marks)

(ii) Examine the plaintiff's submission on Part A documents.

(10 marks)

Continued...

(b) "When, in a civil or commercial trial and after the plaintiff's case is closed, the defendant seeks to submit that he has no case to answer, the efficacy of the court's process is put in an awkward position".

Per Daryl Goon J in *Solsis (M) Sdn Bhd v Kenny Woo B'ng Tat & Anor* [2020] 8 MLJ 695.

Elucidate the above statement.

(8 marks)

(Total: 25 marks)

PART B: ANSWER EITHER QUESTION 4A OR QUESTION 4B

QUESTION 4A

(a) Donna sued Pauline and Marsha for damages for nuisance. Pauline and Marsha were represented by different solicitors. On the trial date, Marsha attended Court, but her solicitor was late as he was stuck in the traffic on the way to the Court. The solicitor asked Marsha to stand down the trial while waiting for him to come. Marsha informed the Court, but Donna's solicitor objected and request for a judgment to be entered. Meanwhile, Pauline was absent on the said date, but her solicitor was in Court when the Donna's solicitor applied for a judgment to be entered against both defendants. Judgment was entered against both defendants which include cost. Pauline contended that her solicitor should pay the cost as awarded by the Court.

Evaluate the judgment against Pauline and Marsha and Pauline's contention that her solicitor should pay the cost.

(20 marks)

(b) Explain the distinction made between striking out and dismissing an action.

(5 marks)

(Total 25 marks)

...Continued

QUESTION 4B

(a) Al Tijari Bank Berhad (ATBB) obtained summary judgment against Angeline, Carol & Co., a consultancy firm in the Seremban High Court for RM1.5 million with the pre- and post-judgment interest and fixed costs determined under the Rules of Court 2012. There are 3 partners of the firm at all material times: Angelina, Carol and Patrick. Carol and Patrick are the co-registered proprietors of a piece of valuable land in Taman Tun Dr Ismail, Damansara with an estimated value of RM20 million. Carol also owns a new model of GT Premium Convertible Ford Mustang and few other assets, but no information is available about them. Angelina is married to a businessman who owns a luxury house nearby KLCC. Angelina is also a part time model at an advertising company, Classy Luxury Sdn. Bhd. (CLSB). CLSB owes Angelina RM500,000.00 for professional charges. ATBB wishes to enforce the judgment obtained.

Based on the above, explain the methods of enforcement that can be taken against the partners of the firm.

(18 marks)

(b) Discuss the general principle that costs follow the event.

(7 marks)

(Total 25 marks)

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